

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS-ST. JOHN

UNITED STATES DEPARTMENT OF)	
AGRICULTURE RURAL HOUSING)	
SERVICE f/k/a FARMERS HOME)	Civil No. 2008/_____
ADMINISTRATION,)	
)	
Plaintiff,)	Action for Debt and
)	Foreclosure of Mortgage
v.)	
)	
Ava Penn, Banco Popular de Puerto Rico,)	
Virgin Islands Housing Finance Authority,)	
successor In Interest to the Government of)	
the Virgin Islands Department of Housing,)	
Parks, and Recreation, The Comfort Zone,)	
Inc.)	
)	
Defendants)	

COMPLAINT

COMES NOW Plaintiff, United States Department of Agriculture Rural Housing Services f/k/a Farmers Home Administration (hereinafter "USDA"), by and through its undersigned attorney, and by way of its Complaint against the Defendants AVA PENN (hereinafter "PENN"), Banco Popular de Puerto Rico ("BPPR"); Virgin Islands Housing Finance Authority, Successor In Interest to the Government of the Virgin Islands Department of Housing, Parks, and Recreation, and The Comfort Zone, Inc. and allege as follows:

1. This Court has jurisdiction over the subject matter of and the parties to the instant case.
2. PENN is the owner certain real property in St. Thomas, Virgin Islands, to wit:

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Parcel No. 2W-45 Estate Nazareth, No. 1 Red Hook Quarter,
St. Thomas, Virgin Islands, as shown and described on OLG
Drawing No. A9-16-T62

(hereinafter the "Property"). *A Copy of the Warranty Deed is attached hereto as Exhibit 1 (4 pages).*

3. On or about September 1, 1994, PENN executed a Note (hereinafter the "Note") and Mortgage (hereinafter the "Mortgage") in the amount of \$110,000.00, in favour of Plaintiff. The Mortgage was recorded in the Office of the Recorder of Deeds, St. Thomas – St. John, on September 1, 1994, in PC 43-L, Page 249, as Doc. No. 5439, Aux. 16, page 300. *A Copy of the Note and the Mortgage is attached hereto and incorporated herein as Exhibit 2 (9 pages).*

4. Simultaneously with the execution of the Note and Mortgage, PENN executed a Subsidy Repayment Agreement in favour of Plaintiff. *A Copy of the Subsidy Repayment Agreement is attached hereto as Exhibit 3, (4 pages).*

5. PENN failed to comply with the terms and conditions of the Note and Mortgage by not making monthly payments as promised.

6. On or about March 1, 1996, PENN executed a Reamortization and Deferral Agreement in favour of Plaintiff to reamortize the monthly payments on the loan. At that time the total debt was \$111,683.37. *A Copy of the Reamortization and Deferral Agreement is attached hereto as Exhibit 4 (2 pages).*

7. On or about April 25, 2005, PENN executed another Reamortization and Deferral Agreement in favour of Plaintiff to reamortize the monthly payments on the loan to include payments in escrow for the payment of taxes and homeowners' insurance. At that time

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the total debt was \$125,157.20. (hereinafter the "New Reamortization Agreement"). *A Copy of the New Reamortization is attached hereto as Exhibit 5 (2 pages).*

8. PENN defaulted on the Note, Mortgage and Reamortization agreements.

9. On or about February 16, 2007, Plaintiff exercised its option to accelerate the indebtedness evidenced by the Note and secured by the Mortgage. Plaintiff sent PENN a Notice of Acceleration, Demand for Payment, Notice of Intent to Foreclose and Notice of opportunity to have a hearing (hereinafter the "Notice of Acceleration"). The principal balance due at that time was \$122,107.11, with unpaid interest in the amount of \$4,656.54 and per diem of \$26.7632.

7. The Notice of Acceleration was sent to PENN via U. S. Mail to her last known address at P. O. Box 306952, St. Thomas VI 00803-6953 and to the physical address of the Property. *Copies of the Notice of Acceleration are attached hereto as Exhibit 6, (6 pages).*

8. To the best of Plaintiff's knowledge, PENN is of the age of majority, competent, and not in Military Service. *An Affidavit of Majority and Competency and of Non-Military Service is attached hereto as Exhibit 7, (2 pages).*

9. Notwithstanding the demand made by Plaintiff, PENN failed or refused to pay the principal sum of \$122,107.11, together with accrued interest thereon from September 1, 2006 through April 24, 2008 in the amount of \$16,084.71, plus Subsidy in the amount of \$32,849.04, and assessed fees totalling \$18,059.26 for a total due as of April 24, 2008, in the sum of \$189,949.35. *A Certificate of Indebtedness is attached hereto as Exhibit 8, (2 pages).* Interest continues to accrue after April 24, 2008 at a rate of \$26.7632 per diem, and Recovery/Cost interest of \$3.6241 per diem.

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10. A title search of the Property revealed that several liens subordinate to Plaintiff; namely,

a. On or about February 28, 1995, PENN executed a Mortgage in favour of the Government of the Virgin Islands, Department of Housing, Parks, and Recreation in the amount of \$23,700.00. Said Mortgage was recorded in the Office of the Recorder of Deeds, St. Thomas and St. John on March 1, 1995 in Book No. 44-K, Page 83, Doc. No. 1076 (the "DHPR Mortgage");

b. On or about December 9, 2002, PENN executed a Mortgage to Banco Popular (hereinafter "BPPR") in the amount of \$230,000.00. Said Mortgage was recorded in the Office of the Recorder of Deeds, St. Thomas and St. John on December 9, 2002 as Document No. 2002006991; on even date, along with the BPPR Mortgage, PENN executed an Assignment of Leases and Rents in favour of Banco Popular (hereinafter the "Assignment of Leases and Rents"). Said Assignment of Leases and Rents were recorded in the Office of the Recorder of Deeds, St. Thomas and St. John on December 9, 2002, as Document No. 2002006991. *A Copy of the Title Search by Premier Title Company, Inc. is attached hereto as Exhibit 9 (2 pages).*

11. The BPPR Mortgage and Assignment of Leases and Rents were made to "secure the guaranty of the indebtedness of THE COMFORT ZONE, INC. *A Copy of the BPPR Mortgage and the Assignment of Leases and Rents are attached hereto as Exhibit 10 (20 pages).*

WHEREFORE, Plaintiff, the UNITED STATES DEPARTMENT OF AGRICULTURE RURAL HOUSING SERVICE f/k/a FARMERS HOME ADMINISTRATION, REQUESTS JUDGMENT AS FOLLOWS:

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- a) Awarding judgment in favor of Plaintiff and against PENN, as set forth in paragraph 9 herein and for all additional sums which Plaintiff may hereafter advance to protect the security of its mortgage; and
- b) Forever barring and foreclosing all of the rights, claims, liens, equity of redemption (except as expressly saved by law) in the Property, and of every person acquiring through said PENN subsequent to the recording of Plaintiff's mortgage and to the date of the Lis Pendens herein; and
- c) Directing that the Property be sold at Marshal's foreclosure sale in accordance with the law in such case made and provided; and
- d) Directing that the proceeds of such sale be applied first to the reimbursement of expenses of sale incurred by the Plaintiff with the balance remaining to be applied in payment of the sums due plaintiff; and
- e) Declaring that the interest of Plaintiff is senior and superior to that of any other lien, if any; and
- f) Directing that Defendant surrender possession of the Property to Plaintiff; and
- g) Awarding Plaintiff its costs in this action including reasonable attorneys' fees and

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h) Such other and further relief as the Court may deem equitable and just.

Dated: 5/1/2008

Respectfully Submitted,

By:


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